

FCC MAIL SECTION

Federal Communications Commission

DA 98-1380

Jul 20 3 35 PM '98

Before the
Federal Communications Commission
DISPATCHED BY Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Powers, Michigan)

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)
)
) MM Docket No. 98-129
) RM-9307
)
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NOTICE OF PROPOSED RULE MAKING

Adopted: July 8, 1998

Released: July 17, 1998

Comment Date: September 8, 1998

Reply Date: September 23, 1998

By the Chief, Allocations Branch

1. Before the Commission for consideration is a petition for rule making filed by Results Broadcasting of Iron Mountain, Inc. ("RBI"), proposing the allotment of Channel 262A at Powers, Michigan, as that community's first local service. RBI indicated that it would file an application for Channel 262A at Powers if a channel is allotted to the community.

2. In support of its request for an allotment at Powers, RBI states that Powers is a community for allotment purposes. RBI points out that Powers is incorporated and listed in the 1990 U.S. census with a population of 271 persons. According to RBI, the residents of Powers regard themselves as a distinct community. RBI points out that Powers has its own elementary and high schools as well as its own fire department. Further, there are a variety of civic, commercial and religious organizations and services that serve Powers such as American Express Financial Advisors, Auto Value, Candle Lite Motel, Farmers Insurance Group, Franciscan Family Health Family Practice, In Style Salon, MFC First national Bank, Menominee County Federal Credit Union, Pine Crest Medical Care Facility, Redwood Restaurant and the Sidetrack Restaurant and Bar. RBI states that there are several businesses that incorporate "Powers" into their name, such as Powers Golf Range & Equipment Sales, Powers Non-Profit Housing Corporation, Powers Printing and Powers TV and Appliance.

3. We believe the public interest would be served by proposing the allotment of Channel 262A at Powers, Michigan, as it could provide the community with its first local broadcast service. A Commission analysis indicates that Channel 262A can be allotted to Powers in compliance with the Commission's minimum distance separation requirements without a site

restriction.¹ Since Powers is located within 320 kilometers of the U.S.-Canadian border, concurrence of the Canadian government will be obtained for this allotment.

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

Community	Channel No.	
	Present	Proposed
Powers, Michigan	-----	262A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **September 8, 1998**, and reply comments on or before **September 23, 1998**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

John F. Garziglia
Patricia M. Chuh
Pepper & Corazzini, L.L.P.
1776 K Street, N.W., Suite 200
Washington, D. C. 20006

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 4 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review

¹ The coordinates for Channel 262A at Powers are 45-41-12 and 87-31-30.

by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal communications Commission, Washington, D. C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D. C.